

**Operational Ethics: Just War and Implications for Contemporary  
American Warfare**

**A Monograph  
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## **ABSTRACT**

This monograph provides a framework for considering the moral conduct of American warfare with particular emphasis on operational targeting. It does not recommend supplanting, altering, or otherwise improving current laws of war, domestic or international. This monograph is merely a *denkschrift* through which the author hopes to inspire discussions on operational ethics among professional officers and civilian proponents of military developments. In light of the current administration's doctrine of preemptive military force to defeat terrorist organizations and states that promote terrorism or develop weapons of mass destruction, the subject of this monograph becomes increasingly important, for the doctrine of preemption may presuppose a fundamental alteration of societies and cultures toward the development of liberal democracies. In the wake of decisive military victory, the transition phase is strongly impacted by perceptions of U.S. warfighting conduct. Therefore, contemporary American-style warfare requires continuous evaluation to ensure that the manner in which the U.S. fights reflects the values of just war tradition, values that are consistent with the laws of war and with American ideals. The U.S., perhaps more than any other country, takes tremendous steps in minimizing collateral damage and non-combatant casualties while treating its adversary's military humanely when defeated. This point is abundantly evident by technological innovations that improve accuracy of weapons, the emphasis placed on legal counsel during operations, and the indoctrination of the force. However, with each successive improvement the standards are elevated and these measures sometimes do not prove demonstrably sufficient when considered in the context of the nature of contemporary American warfare, which relies heavily upon dispersion, standoff attack, and rapid maneuver, all managed from remote command and control centers.

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## CHAPTER ONE

# **INTRODUCTION**

The environment of contemporary warfare demands an examination of how dominance in battlefield technology is changing the manner in which America fights its wars. The wars of the twentieth century witnessed the most destructive forces in the history of warfare as weaponry advancements improved the efficiency of destroying the adversary's forces and facilities, while concurrently the practical restraints on the use of arms diminished. From ancient times to the present military leaders have balanced moral considerations with military necessity in order to achieve desired results on the battlefield. Today, the ability to see first, understand first, and to act first, has not made it easier to reconcile the two. Arguably, from the U.S. military's perspective it is becoming more difficult to balance them as potential adversaries disperse, move into urban environments, and co-mingle with non-combatants. Moreover, the military's increasing reliance on digital technology, standoff weapon systems, and rapid maneuver push the commander farther away from the moral consequences of his actions and present new challenges for the commander to promptly judge when the line is crossed. The evolution of battlefield dispersion and the concurrent development in the ability to strike the enemy from a distance increasingly test the standards of just war tradition as improvements in weapons accuracy raise the standards of expectation for compliance in law and to moral values of just war tradition.

Since the end of the Cold War the United States has increasingly become captivated with the concept that decisive victory is achievable in limited war, a notion that was unthinkable during the Cold War in which limited wars prudently mitigated the risk of nuclear escalation with Warsaw Pact forces.<sup>1</sup> Correspondingly, since 1991 the United States military has become involved in more wars and military engagements, simultaneously drawing upon a larger percentage of its military resources, than it ever has in the preceding forty-five years.

Sensitivities to U.S. involvement in a multitude of conflicts ranging from the Gulf War, Somalia, Haiti, Bosnia, Kosovo, Afghanistan, and Iraq have generated criticism of U.S. foreign policy, which has spilled over into criticism of how the U.S. military fights. Much of this criticism, fueled by global media networks and influenced by social biases, is unfounded from the position of international law. Possibly, no country other than the U.S. has placed so much emphasis on minimizing the destruction of war--however challenging that is--through the development of technology and indoctrination of its force. However, the United States' prominent world stature combined with a notable increase in the number of global military engagements and activities that emphasize decisive victory will continue to draw criticism from adversaries and friends alike. Where perceptions carry the weight of reality even adherence to law will not suffice in satisfying all voices contrary to U.S. policy.

This monograph attempts to show how the conduct of contemporary American-style warfare increasingly tests the moral values inherent to just war tradition—general values that are understood by states and societies throughout the world. Effective employment of information operations has been cited as a means to convince the naysayers of the intentions of U.S. policy; however, information operations are marginally effective without material substantiation in support of the program. If the U.S. military can demonstrably improve its capacity for observance of moral considerations during operations—even surpassing the minimum standards allowed by law, if necessary, then the U.S. military may help to restore the image of the American ideal among those on the margins and convince them to champion American causes on the global scene.

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<sup>1</sup> Colin S. Gray, “Defining and Achieving Decisive Victory,” (Carlisle Barracks, Penn.: U.S. Army War College, Strategic Studies Institute, 2002), 4-5.

**Research Question:**

Does contemporary American-style conduct of warfare integrally infringe upon values inherent to just war tradition?

**Objectives, questions, hypotheses:**

How are the values of just war tradition relevant to the commander today when the law of war mirrors many of the tenets of just war tradition? How does the commander reconcile military necessity as established in the law of war with just war tradition? What are the implications of battlefield dispersion, standoff attack, and the rapid pace of operations to observance of just war traditions? How does the potential operating environment affect the manner in which American forces fight justly? How can commanders mitigate instances of superfluous non-combatant casualties or collateral damage? What organizational or functional changes can the U.S. military make to assist in training and educating service members in adherence to just war traditions or the law of war?

**Definitions:<sup>2</sup>**

Ethics: The discipline dealing with good and bad and with moral duty and obligation; a set of moral principles or values; the principles of conduct governing an individual or group.

Jus ad bellum: Justice towards war; just reasons to go to war.

Jus in bello: Justice in war; just conduct during war.

Jus post bellum: Justice after war; trial and punishment of war criminals.

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<sup>2</sup> Author's note. Definitions are by the author as interpreted through multiple source documents. Definitions of morality and ethics are borrowed from Merriam-Webster dictionary and are shortened to fit the intent of this monograph. Due to the overlap of meanings of the two terms with one another and with the term, just war values, all three are used interchangeably throughout this monograph, unless otherwise noted. James H. Toner writes that in absolute terms, "ethics refers to theory, and morality to behavior," but this distinction fails when one discusses "ethical conduct" (behavior) or "moral attitude" (theory). James H. Toner, *Truth Faith and Allegiance: The Burden of Military Ethics*, (Lexington, Kentucky: University Press of Kentucky, 1995), 8-9.

Just war tradition: An evolutionary idea or body of scholarship that emphasizes moral justification and judgment of political or military activities before, during, and after warfare; often described alternatively as just war theory.

Morality: A doctrine or system of moral conduct or virtue, where moral is defined as of or relating to principles of right and wrong behavior; conformity to ideals of right human conduct.

## **Assumptions**

The United States always attempts to fight operationally with good intent and with the goal of minimizing collateral damage and non-combatant casualties.

Due to the near absence of practical restraints on offensive combat from ground and air systems the United States can attack nearly any target on the battlefield at its choosing.

Dispersion, standoff attack, and the complex, rapid pace of joint operations make target discrimination more problematic than in previous eras when the speed of the battle was limited to the rate of troop and vehicle movements and to mainly one-dimensional operations by individual services.

Chapter One poses the question whether contemporary American warfare remains consistent with the mores of just war, given the assumptions that the U.S. fights with the view toward minimizing extraneous destruction, yet the rapid pace and dispersion on the battlefield make it more difficult to trace the consequences of operational activity. The next chapter explains the methodology for researching this topic with emphasis on operational standoff attack as it impinges on the moral conduct of war. Chapter Two also explains the organization of the monograph.

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## CHAPTER TWO

### METHODOLOGY

The monograph examines whether and how contemporary American-style warfare tests the principles of the just conduct of war (*jus in bello*) convention within the broader just war tradition. This monograph identifies areas in which the U.S. military can improve adherence to just war standards without sacrificing the legal principle of military necessity, while acknowledging areas in which U.S. military activity commendably fulfills just war concepts. This work draws extensively on empirical evidence gathered from recent conflicts, joint doctrine, and legal decisions to establish conclusions and make recommendations. It addresses concerns from the perspective of plans and operations at the joint operational level of war with specific emphasis on targeting.

Just war tradition, or just war theory, is nothing more than the name implies: a tradition or theory. It is only an idea, developed from philosophical, religious, cultural, and legal values that most states acknowledge and observe to the degree in which it suits their purposes, practically or morally, or both. The traditional moral principles of just war tradition have largely either been subsumed by positive law of war, customary law, or have limited practical use for commanders today; however, the values inherent to those principles still remain important to the military. Just war tradition is commonly understood to possess two conventions, although a third convention (*jus post bellum*) has recently emerged and is explained in the next chapter. The first, known as *jus in bello* theory, involves justice in warfare or the moral conduct of warfare and the second includes *jus ad bellum* theory, or justice towards war. The former convention entails methods of warfare; hence, the military becomes the primary actor responsible for adherence to its standards. *Jus in bello* theory includes tests for the principles of proportionality and discrimination. *Jus ad bellum* theory belongs primarily in the realm of policy decision-making;

so therefore, is excluded from the discussion save for its relevance to *jus in bello* theory. This work focuses on the moral conduct of warfare (*jus in bello*) in the spectrum of conflict commonly recognized as conventional war or high intensity conflict, but addresses, as necessary, points on the spectrum ranging from Operations Other Than War (OOTW) to high intensity conflict. On the extreme end of the spectrum of warfare, the discussion of the necessity and use of nuclear weapons represents the strongest case for just war standards. Pacifists, moralists, and military leaders, alike, share common views on the subject. Many of their arguments are beyond reproach, either from a moral or practical standpoint and lie in a completely different frame of strategic consideration; therefore, this discussion is omitted.<sup>3</sup> Furthermore, the use of chemical and biological weapons in war is excluded from the discussion except when necessary to illustrate a point on the moral qualities of weapons.

The organization of the monograph is as follows: The work has six chapters, three of which contain front matter, methodology, and back matter. The body of the work is comprised of three chapters that describe in respective fashion, what just war tradition is, how does the environment of contemporary operations endanger just war values, and how can U.S. military leaders mitigate risks that endanger observance to just war values?

More descriptively, chapter three describes the commonly-accepted principles of the just war conventions, provides a description of the ecclesiastical evolution of just war tradition, and explains the relevance of just war tradition to U.S. military leaders today.

Chapter four is divided into two sections. The first section elaborates the environment and nature of weapons of modern war and the second section describes how these create ethical dilemmas for the operational leader. The first section explains that the environment in which

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<sup>3</sup> Michael Walzer comprehensively discusses the dilemma of nuclear deterrence and its implications for just war theory. Most experts agree that no moral justification existed for a massive nuclear exchange between the U.S. and the Soviet Union during the Cold War, the practical impact notwithstanding. However, arguments for limited use still have merit; and therefore, have served to justify the continued possession of nuclear weapons today. Michael Walzer, *Just and Unjust Wars: A Moral Argument With Historical Illustrations*, (New York: Basic Books, Inc., Publishers, 1977), 275-7.

potential adversaries reside makes target discrimination especially difficult. The threats include organized forces, guerillas, terrorists, armed civilians, and criminals, all of whom will likely disperse, remain obscure, and operate near sensitive facilities and persons in urbanized settings as American overmatch in firepower and maneuver compels them to seek advantage in a non-traditional warfare environment. Also, weapons are qualitatively amoral, but the consequences of their use can be ascertained as immoral, particularly as the use of advanced weapon systems may create unique challenges for the tests of both discrimination and proportionality. The second section describes that battlefield dispersion has pushed the opponents of war farther away from one another, presenting a challenge to discrimination on the battlefield. Subsequently, battlefield dispersion has led to a physical elongation of standoff attack. The ability to project force anywhere at anytime on the battlefield serves to remove the practical limitations of force and may gravitate toward the use of the most destructive tools to attack a given target. Even the use of precision guided munitions may lead toward greater risks in target selection. Finally, American reliance on high technology in communications and command posts tends to place the commander farther away from the moral implications of his decisions. The rapid pace of the attack, combined with standoff, serves to dehumanize conflict and compounds the problems of command and control of forces across a broad battlefield.

Chapter five provides recommendations for improving U.S. observance of just war standards, as well as the law of war, which formalizes many principles of just war tradition. The recommendations include improvements in the areas of operations, planning, doctrine, training and education, and weapon system assessment.

Having described the methodology and organization of the monograph, the next chapter commences with an explanation of the commonly acknowledged principles of the just war conventions, to include a brief account their ecclesiastical evolution and their relevance to current U.S. military leaders.

## CHAPTER THREE

### JUST WAR

#### Just War Theory

What is just war theory? Historically, just war theory has been driven by two paramount questions: When is war legitimate and how does a military limit force in wartime? The search for the answers to these questions has pervaded every military endeavor from the time of Alexander the Great to the present, but it was not until the nexus of the Age of Reason and Christian morality did the theory become substantiated and a tradition emerge. The criteria commonly found in modern just war tradition include a legitimate authority directing war for a just cause and the right intention. Warfare must also have a reasonable expectation for success, must possess proportionality, must embody just conduct, and be used only as a last resort. All of these criteria, save just conduct, are collectively known as the *jus ad bellum* (justice towards war) convention. The just conduct convention is known as *jus in bello* (justice in war) and is the emphasis of this monograph. The rules of just conduct (*jus in bello*) include the principles of discrimination and proportionality. Discrimination means identifying legitimate targets, such as combatants, vice non-combatants, and proportionality means using force commensurate with the ends desired. The latter principle overlaps *jus ad bellum* proportionality in that the ends must be proportional to the means; however, *jus in bello* proportionality applies strictly to the amount of force used to achieve a military end. In the twentieth century the *jus in bello* principles have been expanded into three principles enacted in the International Law of Armed Conflict. These principles include military necessity, proportionality, and humanity. Military necessity assumes that there are times in which non-combatants will be inadvertently attacked, but the military benefit and corresponding long term preservation of life, outweighs the short term non-combatant casualties, the impact of which is known as the principle of double effect. The principle of proportionality remains as stated and the principle of humanity serves to limit the suffering of

combatants. More recently a third convention has materialized known as the *jus post bellum* criteria, in which culpability for war crimes is determined in post-conflict tribunals. The Nuremberg Trials and the International Criminal Tribunal for the Former Yugoslavia (ICTY) are examples of the implementation of the *jus post bellum* convention.

### **Evolution of the Ecclesiastical Stream of Just War Tradition**

According to just war scholar James T. Johnson the development of western just war tradition is analogous to “a river of ideas and practice moving through history” in which specific “streams” of disciplines course along, sometimes combining, sometimes diverging, to form the body of modern tradition.<sup>4</sup> The widest and most defining of these streams include religious and philosophical thought; however, other streams include secular law, military experience, and political custom. Christian ethical practice has provided the foundation to just war tradition and philosophy has provided a rational means of intercourse among the various streams. The evolution of just war tradition is complex and it is comprised of a perpetual interaction across the streams.<sup>5</sup> Indeed, within just war theory what constitutes a justified war for *casus belli* and in conduct is often a matter of debate. There exists among scholars constant interaction and tension about definitions and what constitutes wrongful application of force, the debate lying principally in the direction of two polar planes of thought, that of pacifism and that of utilitarianism; both of which are endemic to the evolution of just war tradition. Just war scholars Paskins and Dockrill affirm that the tradition is not rigid and “an essential part of the just war tradition is its changing agenda. As the world alters which the tradition seeks to comprehend, so the agenda changes for meetings of those who gather from time to time to ponder the two perennial questions ‘May the

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<sup>4</sup> James Turner Johnson, “The Just War Idea and the Ethics of Intervention,” *The Joseph A. Reich, Sr., Distinguished Lecture on War, Morality, and the Military Profession*, no. 6, 17 November 1993, (U.S. Air Force Academy: Colorado, 1993, 9.

<sup>5</sup> Ibid.

Christian, without sin, wage war?" and 'What constraints are there upon the activity of the Christian in the waging of war?'"<sup>6</sup>

While interpretations of just war concepts are found in Greek antiquity, imperial Rome, and the Bible, St. Augustine is often considered the grandfather of just war tradition. Influenced by the writings of St. Ambrose and Cicero, as well as his personal experiences as a Roman Christian during the barbarian invasions in the fourth and fifth centuries A.D., Augustine acknowledged that Rome's conversion to Christianity in Constantine's reign placed traditional Christian pacifism at odds with Christians as Roman citizen-soldiers. In response, St. Augustine adopted a pragmatic, notwithstanding minimalist stance, on when Christians can go to war and how war is conducted. His theory stems from the belief that the maintenance of peace is the ultimate responsibility of rulers of nations; therefore, rulers may elect to go to war only to reestablish peace. Moreover, because peace is the goal, war must be conducted "peacefully," meaning unnecessary violence and excess is to be avoided.<sup>7</sup>

Later, St. Thomas Aquinas further articulated St. Augustine's theory by proffering three necessary conditions for a just war: authorized authority, just cause, and rightful intention. An authorized authority includes a legitimate ruler responsible for the safety and security of his subjects. A just cause includes a rectification of some fault by the opponent. Closely tied to the second condition, the rightful intention must promote some good or avoid some evil.<sup>8</sup>

In the sixteenth and seventeenth centuries just war theory matured to form the basis of modern just war traditions. In this period several writers sought to synthesize and define St. Thomas' teachings on just war theory. Among them, the writings of Spanish theologians Francisco de Vitoria and Francisco Suarez determined that the justification for war is divided in

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<sup>6</sup> Barrie Paskins and Michael Dockrill, *The Ethics of War*, (Minneapolis, Minn.: University of Minnesota Press, 1979), 193-4.

<sup>7</sup> Roland H. Bainton, *Christian Attitudes Toward War and Peace: A Historical Survey and Critical Re-evaluation*, (Nashville, Tenn.: Abingdon Press, 1960), 96-7.

<sup>8</sup> Telford Taylor, "Just and Unjust Wars," *War, Morality, and the Military Profession*, Malham M. Wakin, (Boulder, Colo.: Westview Press, 1986), 228.

two categories. First, a nation at peace, when attacked, always has the right of self-defense; therefore, no special test for the justification of war is necessary. Second, under certain conditions a nation may go to war to rectify an injury to it or to an ally. This second category requires a test of moral justification in which the injury must sufficiently violate a nation's honor, existence, or treaties to the extent that the benefit achieved through war outweighs the harm that war causes. In addition to St. Thomas' three conditions Vitoria and Suarez added three more: war is undertaken as a last resort, the innocent must be protected during the war, and upon the end of hostilities the vanquished must be treated lawfully and with humility.<sup>9</sup>

In the early part of the seventeenth century just war theory as known through the Christian tradition began to merge with secular philosophy. Borrowing from the early ecclesiastical thinkers, Hugo Grotius, a Dutch Protestant jurist, initiated the formulation of a system of laws between nations concerning the conduct of warfare and other activities. An ardent believer in the rights of man imbued from natural law, for his work he is often considered the father of international law. Among Grotius' many important contributions to subsequent international law of war, he addressed the definition of lawful combatants, means of attack (i.e. the use of weapons), and the treatment of prisoners.<sup>10</sup> Grotius died near the close of the Thirty Years' War, and due largely to his influence, at the conclusion of the Treaty of Westphalia in 1648, the secularized successor states continued just war concepts engendered from the religious era which later became the foundations of international law.<sup>11</sup> Laws and organizations that addressed armed conflict began to emerge in the latter half of the nineteenth century. Most notably their numbers include the 1863 Lieber's Code, the 1864 establishment of the International Committee of the Red Cross, and the 1868 St. Petersburg Declaration, and a series of Geneva Conventions and Hague Declarations on war that preceded World War I. However, the advent of

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<sup>9</sup> Paul P. Christopher, *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*, (Englewood Cliffs, New Jersey: Prentice Hall, 1994), 65.

<sup>10</sup> Ibid., 101.

<sup>11</sup> Martin L. Cook, "Moral Foundations of Military Service," *Parameters* 30, no. 1 (Spring 2000):

industrialized warfare, nationalism, and mass armies, as evidenced from the carnage of the two World Wars and the development of nuclear weapons, impelled a juridical and religious reappraisal of the early rules of war, resulting in an accelerated evolution of international law of war that continues today.

### **Relevance of Just War Tradition**

Why is just war tradition a logical and viable guidepost to the conduct of American warfare? First, in the modern era just war tradition is an idea, not a set of rules that is binding on any society. The manner in which a state consciously or unconsciously adheres to the just war tradition is a reflection of choice, its values, or its culture. Just war tradition is a universal ethical standard among Western and Christian states, although it is not exclusively Western. All major world religions and societies espouse a concept of respect for human dignity and life in warfare, albeit in varying shades. For the U.S. and many nations, the values inherent in just war tradition are inseparable, intrinsic elements of culture, policy, and the conduct of war, values that are not imposed from without, but are fundamental within. As indicated from the two perennial questions posed by Paskins and Dockrill in the preceding section, just war values resonate decidedly religious overtones; however, non-Christians and atheists of good will mutually share those values.<sup>12</sup> Today, those values are manifested in the secular society in the form of ethics and basic human morality, what is simply called “the right thing to do.”

Second, the values inherent in just war tradition among other sources helped to inspire the values in international law of war and U.S. law of war, as the tradition evolved from ecclesiastical principles into customary law. In the construction of any rules relevant to war—international law of armed conflict, U.S. law of war, rules of engagement and other measures designed to limit the destruction and suffering of warfare—the merits are important and reflect

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121-2.

<sup>12</sup> Barrie Paskins and Michael Dockrill, 202.

the values of just war tradition, by concretizing those values, lending them articulation and precision where broader ideals do not suffice.

However, the relationship between modern law and morality is problematic. The dominant legal opinion maintains that laws already exist that regulate the conduct of warfare; therefore, there is no need for injecting morality into the analysis of methods. The position of positive law is well substantiated, particularly as it applies to the U.S. law of war, but is more complicated when applied to international law, where authority is not universally recognized and a comprehensive legal system is absent.<sup>13</sup> Just war tradition is often broader than international law and can account for emerging doctrine and technology, the likes of which may yet be

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<sup>13</sup> Proponents of the philosophical branch of law concerning positive law, known as Positivism, assert that law is devoid of metaphysical content, such as moral obligations, and it is coincidental that some laws reflect identical principles of morality. The merits or demerits of the law, although important in its construction, are not relevant once law is posited (Christopher p. 114). The Positivists' argument also contends that law is a self-contained, coherent system that is established by a constituted authority that enforces law. This view works well within a sovereign state, but encounters difficulty at the international level, for what constitutes a common authority? Is the international system of law coherent and enforceable? Seen in this vein adherence to international law appears voluntary, an act of faith and charity. Proponents of the Positivist argument counter that common recognition of international law by states even without means to enforce it is still effective. Moreover, sanctions can enforce law at the international level and the lack of common international enforcing authority is little different than when an individual wins a case against the federal government. The federal government is not compelled to pay damages to the individual by a higher authority, but does so out of a sense of moral justice (Christopher p. 115-6).

Renowned Oxford law philosopher H.L.A. Hart takes the Positivists' argument a step further by concurring that law and morality are distinct in advanced societies, but the existence of an enforcing authority is not a prerequisite for constituting law. Operative rules in primitive societies, or pre-legal societies, are seen differently than in advanced societies. In pre-legal societies there is little distinction between rules and morality. (Christopher p. 117). Individuals have an obligation to a set of primary legal rules derived from custom, practice, and group morals. When the pre-legal society establishes a set of secondary rules, such as a constitution, then it is seen to have developed into an advanced society with a system of law. The advanced society with its secondary rules delineates between law and morality; thus, in the advanced society the merits of law only apply to the construction of law and not to its existence. Furthermore, Hart asserts, in advanced societies enforcement is not an indispensable requirement for law because most people in advanced societies internalize law and behave accordingly without the thought of punishment. However, those that have an external view of the law comply under the threat of punishment; and therefore, enforcement is still necessary, though not a determinant for the existence of law.

Hart contends that the international community is like the pre-legal society that lacks a secondary set of rules. Treaties and customary law can serve in this regard, but they act as sets of rules and not as part of a coherent, enclosed legal system. This does not suggest that individual states are not bound to international law, but demonstrates the ambiguity that arises when the Positivists' view is applied to international law. Therefore, without effective means of international enforcement, the most reasonable means of guaranteeing observance to law is in the internalization of law by individual states. Paul P. Christopher, *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*, (Englewood Cliffs, New Jersey: Prentice Hall, 1994), 114-121. See also H.L.A. Hart, *Concepts of Law*, Oxford: Clarendon, 1961.

unimaginable. International law, on the other hand, is sometimes slow to adapt and is frequently adopted by only those who intend to obey it--perhaps an overly equivocal legal position--however, the plank is incessantly driven by the search for consensus among a multitude of states with competing agendas.<sup>14</sup>

Regardless of the relationship between law and morality, “moral principles do serve as a metaphysical bridge that links legal decisions to justice in those cases where the letter of the law is inadequate.”<sup>15</sup> In a practical sense, just war values can assist commanders in determining relative values within the proportionality principle of the law of war when analyzing courses of action. In other words, a commander can choose to weight a course of action to error on the side of minimizing collateral damage when the law provides him room for maneuver, but little additional guidance.<sup>16</sup>

Significantly for the U.S., the general trend for international law concerning warfare will continue to become more restrictive, as it is influenced by restive international opinion and policy-makers, particularly those in calmer corners of the globe where the public is outspoken at the horrors of modern war and to allegations of American hubris.

Third, military service as a profession invokes a special responsibility to the people of the state it serves. The values in military service include concepts of honor, duty, selfless service, integrity, competency, and ethics, which are instilled through socialization, education, and training. Huntington explains that officership, not unlike the medical profession or the profession of law, has three attributes that distinguish it as a profession: expertise, responsibility, and corporateness. The officer’s universal expertise lies in the management of violence, an

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<sup>14</sup> H.F. Kuenning, “Small Wars and Morally Sound Strategy,” *Ethics and National Defense: The Timeless Issues*, James C. Gaston and Janis Bren Hietala, eds., (Washington, D.C.: National Defense University Press, 1993), 214.

<sup>15</sup> Paul P. Christopher, 120.

<sup>16</sup> United Nations, International Criminal Tribunal for the Former Yugoslavia, “Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia,” 2000. Internet site: <http://www.un.org/icty/pressreal/nato061300.htm#IVA64d>, accessed 3 March 2003.

application that is distinct from all other professions for its uniqueness and for its ponderous responsibility. The application of violence requires a level of responsibility that reflects the values inherent in its society and binds the officer to his singular field of competence: warfighting. The corporate nature of military service effects an autonomous society within society and enables the development of desirable military values.<sup>17</sup> Few nations enjoy the respect, admiration, and limited apprehension of its military than do the citizens of the U.S. In order to maintain that relationship with its citizens, the U.S. military must continue to serve their interests by upholding the highest standards of conduct. The limited wars of the present that do not necessitate mobilization and conscription of the masses will inevitably prompt a greater proportion of the public voice to question its military's activities. However, the alleged cultural gap between the military and the public requires the military to neither shirk from its security responsibilities nor to move away from its values, for the society's interest is well-served by a core repository of moral values resident in a national institution.<sup>18</sup>

Fourth, often within military circles the discussion of morality in war invokes criticism ranging from the utilitarian argument that overemphasis on morality is counter to military necessity or to the realist's claim that fanciful notions of morality have no application in the *realpolitik* of international relations. Nothing is further from the truth. Clausewitz asserts that war is a means of policy; therefore, it follows that a military's behavior in war is also indicative of policy. The values inherent in a society act as a prism through which it views its relations with fellow states. States that share similar values often share similar sentiments in foreign policy. So, too, the degree to which a state views and applies moral conduct in warfare impacts the level of cooperation or non-cooperation it may receive from its neighbors, during or after conflict. Perceptions do matter. Attention to just war concepts and to the law of war, particularly with

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<sup>17</sup> Samuel P. Huntington, "Officership as a Profession," *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3<sup>rd</sup> Edition, Michael Walzer, ed., (New York: Basic Books, Inc., Publishers, 1977), 27-32.

<sup>18</sup>Martin L. Cook, 128-9.

regard to the resolution of military necessity, also have other practical benefits to the nation. In the conduct of war, minimizing unnecessary destruction and noncombatant casualties can set the stage for reconciliation at the termination of conflict. It can also encourage the enemy to surrender or motivate him to follow similar conduct. Consciously addressing this particular part of strategy in evaluating operational courses of action helps to fulfill Aquinas' axiom of building a better peace, or as Liddell Hart called it, "winning the peace."<sup>49</sup>

In his 2002 State of the Union Address President Bush announced a new policy of preemption toward regimes that harbor global terrorists and manufacture weapons of mass destruction (WMD). From a moral standpoint this policy has drawn heated criticism from potential adversaries, neutrals, and allies alike, for it overturns the commonly accepted twentieth century view that only defensive wars (defense of a sovereign state or an aggrieved ally) can satisfy the principles of *jus ad bellum*. Although the grounds for going to war (*jus ad bellum*) is not the subject of the monograph, one can quickly ascertain that when the reasons for going to war draw sharp criticism from a variety of quarters, then the conduct of war (*jus in bello*) will receive even greater scrutiny. An impassioned observer of the conflict will have difficulty separating the justice towards war from the justice in war conventions, as evidenced by critical comments made on regional cable networks and in print media over the recent conflict in Iraq.

Just war concepts still have relevance in how the U.S. fights its wars. Warfare is a rational human activity, which implies choices that a country must make in order to win, but to win with a longer view of fashioning conditions that prevent conflict in the future. Many of the values inherent to the military profession and to the law of war stem from just war concepts, but adherence to these values does not have to stop at the threshold of law or regulation. Commanders and service members have a responsibility to their clients, the public, to uphold those values. Due to the U.S.'s unique role in the world as the dominant purveyor of democratic

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<sup>49</sup> B.H. Liddell Hart, *Strategy*, 2<sup>nd</sup> Edition, (New York: Meridian, 1991), 350.

values, the manner in which its military activities are perceived has an impact on its subsequent foreign policy.

Chapter Three described the conventions of the broader just war tradition and how they evolved to form the basis for modern just war tradition and international law of war. The moral values inherent to the tradition are still important to military commanders for they reflect basic human values and often comprise the merits of positive law for their establishment. Moreover, just war values are embodied in the values of the military profession and it is the manifestation of those values during the conduct of war that is indicative of U.S. foreign policy. The next chapter explains how the environment of war, the battlefield and weapons, complicates U.S. observance of just war standards. Despite technological advancements and training that improve the military's ability to realize moral conduct in war, dispersion and standoff attack, combined with the rapid pace of operations, provide increasingly unique challenges for operational commanders on the contemporary battlefield.

## CHAPTER FOUR

# ENVIRONMENT OF CONTEMPORARY WAR

## The Environment and Weapons of War

### Environment of War

Much literature exists about the current and future battlefield environment that U.S. forces do and will operate in. Burgeoning populations in underdeveloped regions coupled with migrations of people in search of employment to urban areas, particularly near littoral and riparian areas, create tensions between the wealthy and poor, the technologically advanced and the agrarian classes. These are not necessarily new conditions. They have existed and accrued throughout the world since at least the early modern period; however, what is new is the that gap between rich and poor is widening by orders of magnitude and the information age is exposing this gap through all forms of media to an ever larger audience. Unfulfilled expectations of governments and authority have given rise to destructive ideologies shielded under the mantle of religion, and to international enterprises that generate wealth for a handful of criminals through illegal trade in humans, drugs, and weapons. Furthermore, regional powers, inimical to the U.S. and its allies' interests, continue to use conventional and unconventional means to spread their influence and to subvert the international system of order.

U.S. foreign policy will demand that the U.S. military and the other elements of national power remain engaged in these areas to deter terrorist attacks, to counter narcotics and illicit goods trafficking, to prevent weapons of mass destruction (WMD) proliferation, and to defeat conventional threats to regional stability. Access by the military to these regions is increasing, in part because improvements in strategic mobility have improved accessibility, but also due to the absence of restrictions evident during the Cold War and the relative international acceptance to military involvement since 11 September 2001. Of course, the accepted level of military

involvement will evolve as the U.S. and its allies prosecute the war on terrorism and the war in Iraq.

The environment confronting the U.S. military is daunting enough because of the expanded and variegated nature of the urban and complex battlefield; however, the threat has also taken on new dimensions. Potential adversaries have learned from U.S. tactics, techniques, and procedures (TTPs) used in Somalia, Yugoslavia, Iraq, and Afghanistan and have developed effective countermeasures, to include dispersion, co-mingling with non-combatants, decoys, collocation of equipment and personnel with religious or historical landmarks, the use of off-the-shelf technology for communications and reconnaissance, and even traditional means of communications such as runners and pigeons. Furthermore, former directors of the Army School for Advanced Military Studies, Huba Wass de Czege and Richard Sinnreich write, "Proliferation of hostile communications, sensor, missile and special operating force capabilities, together with a growing WMD threat, may radically increase the zone of vulnerability of support systems and facilities formerly immune from direct attack, and may require even combat forces to avoid prolonged occupation of detectable and therefore targetable locations."<sup>20</sup>

The location of the next battlefield is difficult to predict; however, general characteristics can be discerned from present and potential conflict areas. The environment is likely to feature enclosed spaces, such as urban or compartmentalized terrain, which will negate the advantage of extended-range ground fire systems that the U.S. enjoys. It will likely have a high degree of poverty among the population in urban settings with poor infrastructure, weak authority, and minimal healthcare and support facilities, which will require that U.S. forces perform OOTW functions simultaneously with combat operations. It will contain a mixture of non-combatants and combatants, living and working in close proximity with one another both materially and spatially, which makes target discrimination extremely problematic, and in some cases, the target

unassailable. Combatants will likely ignore Geneva standards on conduct and uniform, which, although not obviating U.S. observance of Geneva standards, will frustrate soldiers, marines, and small unit leaders.

### **The Nature of Weapons**

The weapons of war represent for the moralist tangible evidence of the ethical difficulties of warfare. Weapons are physical, concrete objects with known destructive capabilities and are easy to single out for their potential to excessively kill, maim, or destroy. Countless books and articles have been written about the “horrors” of modern weapons. The truth is that war is horrible for the participants regardless of what weapons are used and time has honored the witnesses of war with an endless progression of new and more lethal weapons that with each generation continue to shock the uninitiated and captivate the apprentices of warfare.

The weapons of war by their existence and use are not immoral. Even the most destructive weapons in the U.S. arsenal, to include thermobaric bombs, depleted uranium munitions, anti-tank mines, cruise missiles, and strategic nuclear weapons are not qualitatively immoral. This is not to suggest that military proponents can obfuscate military necessity behind the catchphrase cited by supporters of the National Rifle Association, “Guns don’t kill people, people do.” For it is true that the responsibility for “pulling the trigger” rests with people at individual and command levels; however, the destructive power of many military weapons wielded against humans or objects is so tremendous that the unpredictable and undesirable consequences may supercede the military benefit gained through their use. The question of their morality or immorality lies, rather, in the consequences of their use, or more precisely, the

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<sup>20</sup> Huba Wass de Czege and Richard Hart Sinnreich, “Conceptual Foundations of a Transformed U.S. Army,” *The Land Warfare Papers*, no. 40, (Arlington, Virg: Association of the United States Army, Institute of Land Warfare, 2002), 4.

existence and use of such weapons is amoral until their use evinces a lack of discrimination or proportionality.<sup>21</sup>

Some argue that certain weapons are immoral simply because of the potential cruelty, suffering, and devastation that they might inflict upon an adversary. Weapons of this category often include chemical munitions, biological agents, nuclear weapons, and more recently cluster bombs, blinding lasers, and land mines. The arguments condemning these types as immoral center on both the proportionality criterion, for their tendency to overkill or create excessive suffering in their victims, and the discrimination criterion, due to the relatively large area affected which may include noncombatants. These concerns are legitimate; however, the debate is often clouded by arguments colored by perspectives of the parties involved. In some cases states that desire to ban such weapons neither have the capability to produce them nor do they face a viable threat that warrants a larger and more varied inventory of weapon systems. In other cases, particularly for biological weapons, even if they could be effectively weaponized, militaries cannot reliably control the negative consequences to domestic defense industry personnel and the environment once produced and unleashed. Indeed, for chemical and biological weapons, in addition to their horrible secondary effects, their banning by international law is justifiable simply because dangers to the environment and non-combatants from their production, handling, storage or use, outweigh any imaginable military benefit.<sup>22</sup>

Attempts have been made to categorize weapons either to ban their use or to indicate traits that are morally troublesome. The twentieth century observed a spate of conventions and protocols originating from Geneva and The Hague to ban or limit the use of a variety of weapons.

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<sup>21</sup> Nicholas G. Fotion, *Military Ethics: Looking Toward the Future*, (Stanford, Calif.: Hoover Institution Press, 1990), 25.

<sup>22</sup> Conversely, in the instance of nuclear weapons the case has been made that the possession of nuclear weapons by the Soviet Union and the U.S. during the Cold War was morally justified because its deterrence value kept wars limited and conventional, and should the need arise, they may continue to deter the use of weapons of mass destruction by malevolent states or actors. Charles Krauthammer, “On Nuclear Morality,” *Military Ethics: Reflections on Principles—the Profession of Arms, Military Leadership, Ethical Practices, War and Morality, Educating the Citizen Soldier*, Wakin, Malham M., Kenneth Wenker, and James Kempf, eds., (Washington, D.C.: National Defense University Press, 1987), 505.

The most well known of these protocols includes the 1925 Geneva Protocol on the prohibition of the use of poison gas. More recent protocols include the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention that banned the production of such weapons, as well as, the 1980 Certain Conventional Weapons (CCW) Treaty that contains prohibitions or limitations in four protocols ranging in order from non-detectable fragments, anti-personnel mines, incendiary weapons, and blinding lasers. In 1997 the Ottawa Convention formally banned the use or sale of all anti-personnel mines. More than fifty percent of the world's states have signed or ratified these documents, although the U.S. has declined to ratify Protocols III and IV of the CCW and the Ottawa Convention. The U.S. reluctance to accept these latter treaties stems from its global military commitments and what it deems as the undermining of military necessity to excessive humanitarian concerns. For instance, Protocol III proscribes the use of incendiary devices near civilian concentrations and Protocol IV prohibits the use of blinding lasers.

Although the U.S. has limited use for such weapons, it does not acknowledge a need to suspend with their use, when it perceives their use can be humanely accomplished to fulfill military purposes. Similarly, the U.S. agrees with the Ottawa Convention in spirit; however, it sees its commitment to assist in defending South Korea warrants the use of anti-personnel mines and remotely deliverable mines when the North Korean threat lies mere kilometers from the outskirts of South Korea's capital Seoul.<sup>23</sup>

## **Ethical Consequences of American Warfare**

### **Battlefield Dispersion**

The increasing lethality and accuracy of weapons that precipitated with the advent of the rifled musket in the middle of the nineteenth century has produced a phenomenon known as battlefield dispersion that to this day appreciatively inclines combatants to spread farther afield in

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<sup>23</sup> Eric S. Krauss and Mike O. Lacey, "Utilitarian vs. Humanitarian: The Battle Over the Law of War," *Parameters* 32, no. 2 (Summer 2002): 80.

order to protect weapons, communications, and personnel from enemy attack. Through the use of technological innovations the U.S. military has proved masterful at developing systems and equipment that enable it to hide or disperse its personnel and weapons from its adversaries in wartime. This phenomenon is evident in the use of stealth technologies in aircraft, fire-and-forget weapons, and heat-reducing components in uniform material, but it is also manifest in how the U.S. fights. For instance, aircraft often fly above maximum enemy air defense altitudes, lasers guide missiles and rockets to their targets from hidden firing positions, satellite communications allow commanders to direct operations from regional or extra-regional command posts, and the infantry is used sparingly in direct combat when other means can safely attack from a distance. Within U.S. military circles the trend toward battlefield dispersion has led to discreet use of its personnel and equipment in combat which in turn has led some to disparagingly conclude that the U.S. military is “risk averse;” however, this conclusion neglects the central and necessary component to battlefield dispersion, force protection, which every military endeavors to promote to the best of its capabilities.

With the phenomenon of battlefield dispersion comes mounting challenges to ethics in decision-making. The enemy, too, effectively uses battlefield dispersion to protect its force, particularly when confronted with a superior conventional threat as sophisticated as the U.S. military. As the enemy disperses into urban or foliated areas, fights from protected sites, or dons clothing that is indiscernible from that of non-combatants around him, discrimination becomes extremely problematic. The activities by Iraqi para-military forces during Operation Iraqi Freedom demonstrates how the enemy might dress in civilian garb or hide behind white surrender flags in order to entice U.S. military personnel to let down their guard before ambushing them. The enemy may use non-combatants as “human shields” to protect key military facilities and personnel--a method of dispersion tantamount to protection in trenches--or even as decoys in military convoys to attract the munitions of U.S. indirect fire systems, as was suspected during

NATO's Operation Allied Force over Yugoslavia in 1999.<sup>24</sup> In effect, an inferior enemy is likely to attempt to protect its force behind international condemnation for U.S. wartime activities.

### **Standoff and Targeting**

Battlefield dispersion for the U.S. has led to increasing technological and operational innovations that efficiently enable attacking the enemy, his equipment, and facilities from a distance, effectively rendering them militarily unprotected, while protecting its own systems in space. However, attack from a distance degrades assurances of discrimination and proportionality. This section illustrates a few moral considerations that standoff presents.

Arguably, the U.S. military has the capability to strike almost anywhere at any time on the battlefield, but it is limited in its ability to detect a potential target, track it, and then discriminate it from non-combatants. Even once a legitimate target is identified, the problem then becomes a question of whether the military benefit of attacking it outweighs the secondary effects of noncombatant casualties and collateral damage. Although doctrine recognizes the need to detect and analyze the impact of collateral damage, it contains no methodology to track non-combatants on the battlefield. In practice, the identification of population centers and critical facilities is standard; however, tracking the movement of "pockets" of civilians is often an afterthought and is secondary to the primary objective of tracking the enemy.<sup>25</sup> This circumstance is not likely to substantially improve in the near future.

The munitions of choice for America's targeting regime, precision-guided munitions, are often touted as the corrective to the past moral complications of carpet-bombing and area targeting. Precision-guided munitions (PGMs) are designed to provide greater target accuracy;

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<sup>24</sup> On 14 April 1999 NATO planes attacked a convoy of Albanian refugees near Djakovica, Kosovo. NATO initially suspected that the Yugoslav Army had placed the refugees in a convoy with military vehicles to provoke an attack, but this was later found unsubstantiated. According to the UN prosecutor's report, the mistake occurred in part as a result of a series of events leading up to the attack and because the pilots could not distinguish military vehicles from tractors at the altitude they were flying. The pilots were not found criminally negligent. United Nations, Internet site: accessed 3 March 2003.

therefore, requiring fewer sorties and munitions to attack and destroy a target. They also have the added benefit of minimizing collateral damage when used judiciously, because their circular error of probability (CEP) is marginal compared to that of so called “dumb” bombs. To be sure, any explosive device can cause considerable damage to its intended target and objects around it; however, the development of PGMs is testament to the acknowledgement by the U.S. that it can simultaneously improve lethality with an eye toward limiting collateral destruction.

Nevertheless, PGMs have a number of technical limitations or vulnerabilities that hinder their use. For instance, because PGMs are guided by either laser, electro-optical, or Global Positioning Satellite (GPS) systems, their guidance systems are subject to the elements of the battlefield such as smoke, rain, clouds, fog, or foliage. The GPS guidance package, while not impacted significantly by battlefield elements, is subject to the use of GPS jammers by the enemy, which are relatively cheap to obtain. The military handicap, notwithstanding, these limitations pose a risk for errant attack when targeting in population centers. This risk appears inconsequential when compared to the use of conventional bombs; however, an important question remains (for which this author has seen no reliable study): Have PGMs increased the propensity for targeting in populated areas in the past decade?

More importantly are the moral implications created from the unforeseen impact of the use of PGMs. In Operation Allied Force Serbian civilians held rock concerts and rallies on bridges around Belgrade at night to prevent NATO planes from bombing the bridges. Operation Desert Storm witnessed Saddam Hussein firing Kuwaiti oil fields, an event that invoked the ire of the world as an environmental catastrophe. However, it is conceivable that Iraq ignited the wells to create smoke to foil the guidance systems on PGM munitions and to cover his military forces, an act that, despite the detriment to the environment, made military sense if it were the case.<sup>25</sup>

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<sup>25</sup> Richard J. Butler, “Modern War, Modern Law, and Army Doctrine: Are We in Step for the 21<sup>st</sup> Century?” *Parameters* 32, no. 1 (Spring 2002): 56.

<sup>26</sup> Charles J. Dunlap, Jr., “Technology: Recomplicating Moral Life for the Nation’s Defenders,” *Parameters* 29, no. 3 (Autumn 1999): 28.

The U.S. military will likely see continued use of non-combatants as a means of thwarting precision targeting systems, a means limited only by the cruel imagination of the enemy it fights.

From the individual's perspective standoff dehumanizes conflict. It is safer and militarily more effective to attack from a Paladin artillery system or F-117 aircraft, secure in the knowledge that the enemy likely cannot strike back, than to place soldiers at risk on the ground. In training for warfare service members are conditioned to demonize the enemy in order to strengthen unit cohesion and to stiffen the resolve to fight the enemy. The alienation of the enemy, beginning with basic training, enables the soldier to kill reflexively without reflection upon his childhood socialization that taught him that killing is wrong.<sup>27</sup> Michael Walzer, using examples from the Spanish Civil War and World War II, illustrates the humanity of war. When soldiers happened upon an unsuspecting enemy soldier in a compromising position that all humans can relate to, for instance, taking a bath, smoking a cigarette, or using the latrine, the soldiers chose not to shoot the enemy, even though it was permissible under the laws of war. In effect, Walzer writes, in war the "alienation is temporary, the humanity is imminent."<sup>28</sup>

However, recent studies have shown that standoff, resulting from technological innovations tends to "disengage" the individual warfighter from the enemy, making him seem less human; and therefore, easier to kill.<sup>29</sup> In other words, the ability to detect and target the enemy from afar, without the nuances of humanity appearing in the sights, insulates the targeteer from the human side of war. In such instances, Special Operating Forces (SOF) and Forward Observers (FO) may represent the only human contact with enemy forces. Their limited frame of reference and proximity to danger hinder their ability to appropriately assess the broader moral implications of attacking a given target. The pilot or Paladin operator relies solely on the SOF individual or FO's judgment as to the moral appropriateness of the target. Furthermore,

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<sup>27</sup> Pete Kilner, "Military Leaders' Obligation to Justify Killing in War," <http://www.usafa.af.mil/jscope/JSCOPE00/Kilner00.html>, accessed 12 February 2003.

<sup>28</sup> Michael Walzer, 142.

conditions may arise in which ground forces may opt to use indirect fires on targets that can be easily dispatched with direct fires, but ground commanders choose to use indirect fires to shield his soldiers from the direct task of killing the enemy. Near An Najaf during Operation Iraqi Freedom, U.S. soldiers were confronted with waves of Iraqi fighters coming from a factory. Each time the Iraqi soldiers emerged from the factory in a frontal attack on U.S. positions, the American soldiers mowed them down. Finally, the commander, disgusted with the massacre and the suicidal Iraqi attacks, decided to call for close air support to attack the factory and to kill the remaining Iraqis; thereby, efficiently stopping the resistance and protecting his men from the emotional trauma of killing.<sup>30</sup>

### **Command, Control, Rapid Operations**

Dispersion of the battlefield, necessitated for protection of command centers and enabled by communications technology, has correspondingly placed senior commanders farther away from their fielded forces. An inverse relationship between the higher the command and the “taste” of the battle is emerging, which portends a loss of moral empathy for the enemy, at least in the micro sense. However, the digitization of the battlefield brings promise of greater awareness of moral implications at a macro level, if commanders can adapt to the changes in modes of situational understanding wrought by digital technology as it translates a view of rapid operations to the commander.

Digitization of the command center provides the staff the ability to access quickly and transmit tremendous amounts of battlefield information. The amount of information desired or needed is affected by the commander’s personality and the organization of the command center. There is a danger that the commander may receive too much information, which the human mind cannot adequately assimilate and process. Alternately, filters imposed by staff sections may limit

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<sup>29</sup> D. Keith Shurtleff, “The Effects of Technology on Our Humanity,” *Parameters* 32, no. 2 (Summer 2002): 105.

<sup>30</sup> Ann Scott Tyson, “U.S. Troops’ Anguish: Killing Outmatched Foes,” *Christian Science*

the amount of information the commander receives rendering him or her an incomplete picture of the battle. Furthermore, digitization enables more rapid decision-making. In a theoretical and positive sense, the greater the speed in which decisions are made and executed the quicker the operation comes to a close and potentially the greater the number of lives spared on either side. However, in practice the shorter the length of time for execution of a decision, then the narrower the range of options considered and “under conditions of battle stress, where decisions may have potentially catastrophic consequences, most commanders will invariably focus on manageable or familiar areas of an operational problem. This tendency will mean that many senior field officers may fail to confront the macro level—or the full import and complexity—of a military operation.”<sup>31</sup>

Operation Desert Storm offers some examples for examining moral challenges presented by rapid operations, particularly those that, although not entirely digitized, are embodied by complex command structures, ad hoc organizations, and sustained tempo. The most oft-mentioned example occurred at the close of the ground war in which retreating Iraqi columns were decimated by close air strikes along the highway exiting Kuwait—the highway sometimes, and erroneously, named the “Highway of Death” (the number of casualties was relatively low). Experts agree that the coalition’s actions in this instance were legally justified out of military necessity because the targets consisted of military personnel and vehicles retreating, not surrendering, and could present a threat to coalition forces at a later time.<sup>32</sup> However, this example if applied to similar situations brings to the fore the question of assessing proportionality of means when the tempo of the operation contracts the number of options for consideration. In

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*Monitor*, 11 April 2003.

<sup>31</sup> Jim Wallace, “The Ghost of Jomini: The Effects of Digitization on Commanders and the Workings of a Headquarters,” *The Human Face of Warfare: Killing, Fear, and Chaos in Battle*, Michael Evans and Alan Ryan, eds., (Sydney: Allen & Unwin, 2000), 125-6.

<sup>32</sup> Patrick J. Dolan, *Just War Theory in the Gulf War Debate: A Review and Assessment*. (Rome: Pontificia Studiorum Universitas a Sancto Thoma Aquinate in Urbe, 1997), 170.

other words, when does the commander's appreciation of the change from operational withdrawal to catastrophic rout cause him to consider other means to force the enemy's surrender?

The above example is difficult to resolve, if resolvable at all; however, occasionally simple mistakes occur because the rapid tempo of the operation causes planners to overlook matters with moral or even severe political implications. General Wesley Clark writes about the painstaking care taken during Operation Allied Force over Yugoslavia in 1999 to minimize collateral damage and to determine legitimate military targets.<sup>33</sup> Nevertheless, the rapid pace of operations contributed to a target selection oversight in which the Chinese Embassy in Belgrade was destroyed.

The impact of military transformation on the manner in which the U.S. abides moral considerations remains yet unseen. However, a few observations provide some indication of what is to come. Joint Vision 2020 describes a vision for full spectrum dominance and increased interoperability among the services, both of which imply an expanded and more complex operational nature in which the services fight. Moreover, this suggests increased emphasis on ad hocism and dynamic task organizing of forces during operations. Digitization, although providing the rapid transfer of vast amounts of information, does not overcome the physical limitations of target detection and discrimination, as indicated earlier. A 2001 RAND study using data from the 1999 Kosovo war in a simulated Small Scale Contingency (SSC) determined that remote Intelligence Surveillance and Reconnaissance (ISR) assets, such as Predator, U2, and JSTARS, in support of an organization based on the Future Combat System (FCS), will have a difficult time discerning between combatants and non-combatants well into the 2015-2020 timeframe.<sup>34</sup>

Chapter Four explained how the environment of war obscures the recognition of just war values because the nature of dispersion and stand off attack, coupled with the rapid pace of

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<sup>33</sup> Wesley K. Clark, *Waging Modern War*, (New York: PublicAffairs, 2001), 225.

operations, tend to complicate the commander's view of the battle despite improvements in communications and technology that allow him to more rapidly assimilate information. Though no unqualified solution exists that satisfies all demands for morality in wartime, the following chapter provides recommendations for overcoming many of the challenges presented to operational commanders. They include recommendations for modifications or additions to practice within the areas of operations, plans, and doctrine. It also recommends improvements in training and education of the law of war and the evaluation of the use of weapons.

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<sup>34</sup> Matsumura, John, Randall Steeb, Tom Herbert, et al., ed., "Exploring Advanced Technologies for the Future Combat System." (RAND Arroyo Center, 2001), 15.

## CHAPTER FIVE

# FINDINGS AND RECOMMENDATIONS

## Plans, Operations, and Doctrine

The complex nature of future battlefields combined with the manner in which the U.S. fights operationally presents unique challenges to moral considerations for commanders. The dispersed battlefield, standoff attack, and the rapid tempo of operations make discrimination and control difficult, while correspondingly dehumanizing conflict for the combatants. Concomitant with the nature of this environment is domestic and international pressure to fight wars “cleanly” and quickly with minimal loss of life on all sides. This pressure, abetted by global media networks with instant satellite broadcasts that tend to dramatize conflict (as if it was not dramatic enough), often demands standards that are tougher than international law. Although the U.S. cannot satisfy all critics of its methods of warfighting it can take measures to mitigate moral dilemmas. Notably, defining moral conduct often lies in the eye of the beholder, which presumes continued need for information operations to temper and balance stories of U.S military activities in the their proper context. As long as the U.S. commander is assured that actions in this regard are supported by the American public, his or her subordinates, and his or her conscience, then the moral choices are probably right.

Nevertheless, recent developments in the field of international law raise concerns for how U.S. military activities are perceived. A salient example is provided in a *Parameters* article by a retired Army warrant officer who took part in providing military technical information to the International Criminal Tribunal for the Former Yugoslavia in the prosecution of war crimes. In the article he cites three judicial inquiries or cases that raised the question of unlawful attack during military operations, one of which included NATO’s targeting in Yugoslavia during Operation Allied Force in 1999. He explains that for the establishment of unlawful attack two

conditions must be met. First, the physical element (*actus reus*) identifies the act against non-combatants or property, and second, the mental element (*mens rea*) that identifies intention or recklessness. To pass the test for the mental element, the inquiry implies a requirement that commanders must conduct adequate reconnaissance and surveillance to identify legitimate targets. This system of reconnaissance must provide the commander sufficient information to allow him or her to make informed decisions as to secondary effects from targeting and finally this system or reconnaissance must be monitored to preclude accidental targeting of non-combatants or non-military objects that are superfluous to the military objective.<sup>35</sup>

Even though NATO was absolved of malfeasance in the indicated report, this article is significant for it describes an international inquiry into NATO's operational conduct. In the past such inquiries were usually directed toward individuals or isolated events and not toward the operations of a coalition, particularly a victorious coalition.

In practical terms this circumstance raises concerns for U.S. operational methods. First, as mentioned earlier, U.S. operations do not uniformly provide the means to track non-combatants. Reconnaissance and surveillance assets are seldom dedicated to acquire and track their movement unless their activities impinge on the immediate objective. Furthermore, non-combatants subjected to the environment of war do not behave in predictable patterns, as does a conventional military force. U.S. intelligence personnel are trained to detect and analyze enemy forces based on their doctrine, organization, and military logic, not non-combatants on the battlefield. Attempts to track movement or activities by civilians will often need to rely on dynamic retasking of assets or upon reasoned guesswork. The commander will have to judiciously determine intelligence priorities for this action, because it entails economizing assets and capabilities that are tied to other collection activities. The recently published Joint Publication 2-01.1, Joint Tactics Techniques and Procedures (JTTPs) for Joint Operations, addresses the intelligence process' role in identifying and analyzing collateral damage concerns,

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<sup>35</sup> Richard J. Butler, 49-50. See also, United Nations, Internet site: accessed 3 March 2003.

to include non-combatants, proximity of historical, cultural, or religious structures and facilities containing hazardous chemicals and materials. Joint Publication 2-01.1 also devotes an entire appendix on the Law of Armed Conflict and rules of engagement considerations for targeting. This joint publication, only released in January 2003, is a step in the right direction. However, joint doctrine, in general, has not been updated to address the changing environment in which the U.S. operates. In spite of increased emphasis on identifying sensitive facilities and non-combatant activities, joint doctrine still lacks JTTPs to assist commanders in this regard.

The digital battlefield offers the commander the capability to closely examine and monitor moral considerations in operations, because rapid exchange of bundles of information can provide the commander with a more complete picture of the battlefield. Imagine the Forward Observer (FO) who identifies and lasers an enemy truck in a village. His report cross-keys to a sensor on an Unmanned Aerial Vehicle (UAV) which in turn passes the target location to a loitering F-16. Simultaneously, the commander at the operations center receives the digital report from the FO, reviews the UAV images, and discusses the implications for secondary effects with the pilot. The commander has used multiple systems to assess the target and quickly make a determination in attacking it.

Although this example is simplified, digital technology bodes well for the commander's appreciation of all elements in the battlespace; however, commanders must learn to harness the technology to limit the amount of information he or she receives to the essential elements needed to make informed decisions, while not filtering so much information that he or she misses critical pieces that form his or her understanding. Digital technology, however, will never completely eliminate the fog of war. Also, commanders must learn to adapt to an operations environment remarkably devoid of radio communications and the bustle of paper reports—the silent operations center—which demands that situational awareness be obtained by studying the icons on a monitor and conversing with relevant subject matter experts. In this environment commanders and staff

must frequently meet to review plans and operations to share and sustain situational understanding.<sup>36</sup>

Air power theory is evolving to address the concerns by humanitarian groups over collateral damage, as well as military theorists who question the effectiveness of bombing so-called dual-use facilities when wars are limited in time and objective. Targeting of infrastructure to defeat the enemy achieves diminishing returns, particularly in limited wars that are prevalent today. Air Force Lieutenant Colonel Ellwood Hinman provides a cogent argument that largely discredits previous air power theories as ineffective in contemporary warfare while offering a compromise that takes the best elements of what are called “decapitation” and “denial” theories and incorporates them into a hybrid theory. Hinman asserts that the strength of his hybrid theory includes the fact that it deliberately emphasizes targeting of military objectives at first, for by attacking military objectives air power attacks the essence of enemy strength while optimizing the economization of force against other objectives. Furthermore, it denies the enemy the ability to conduct offensive operations and deprives him of physical means of resistance. Significantly, for this topic it minimizes collateral damage in the first phase and when attacks on the enemy’s military do not achieve the aim, the ante is raised to selectively attack targets that are politically or morally sensitive. This also precludes premature escalation of the conflict that may draw untimely criticism. Hinman’s argument has significant operational merit that if studied, refined, and instituted, may have positive moral and political implications.<sup>37</sup> The recent war in Iraq, although too recent to study in depth as of this writing, appears to combine the elements of Hinman’s hybrid theory, effectively minimizing collateral damage as warranted under the political constraints of contemporary warfare.

One method of estimating the expected number of civilian casualties in a conventional attack on dual-use networks is through computer modeling similar to the U.S. Strategic

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<sup>36</sup> Jim Wallace, 128.

Command's Joint Resource Assessment Data Base, a simulation designed to project casualties from a nuclear strike. For conventional attack this method is best suited to attacks from aerial platforms using either Precision Guided Munitions (PGMs) or dumb bombs. This approach does have its flaws. For instance if the simulation determines one form of attack is less lethal than a range of other options do the decision-makers automatically default to the less lethal option as determined by the computer?<sup>38</sup> Also, because the area of impact in conventional attack is relatively small, the model for conventional attack provides unreliable fidelity. This model is perhaps better used in assessing Computer Network Attacks (CNA) because its degree of reliability is improved by a larger sampling.

## **Education and Training**

Education and training are institutional responsibilities that prepare the service member for the rigors of combat and the application of acquired skills. Training just war values does not require a separate regimen devoted to instilling values that are already apparent in the institution's ethos. Just war values are instilled by strengthening existing programs and by establishing quantifiable standards for progress, where applicable. There are two primary avenues in which to foster the individual's espousal of these values: through the inculcation of professional military virtue in education and through the training of the law of war.

The senior and intermediate leader education systems within each service must progressively continue to emphasize professional virtues throughout the service member's career. Even though a senior leader presumably has a strong personal moral foundation that enabled him or her to achieve a position of greater responsibility, professional virtues must be reinforced to maintain those virtues. This becomes important for making strong moral decisions during the stress of combat where "ethical actions do not simply occur, they are products of wisdom and

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<sup>37</sup> Ellwood P. Hinman, "Toward a Theory of Coercive Airpower for Post Cold-War Conflict," *Air University Cadre Paper*, no. 14, (Maxwell Air Force Base, Alabama: Air University Press, 2002), 38-9.

<sup>38</sup> Charles J. Dunlap, Jr., 31.

virtue annealed into habitually good education.<sup>39</sup> The leader is responsible to subordinates to demonstrate those virtues through good times and hard and to impart them through positive influence. The hierarchical structure of the military induces an inherent risk of breeding conditions for the unethical abuse of authority; therefore, it is incumbent upon the education system to inculcate ethical values in its leaders so a base is formed to which the leader defaults in difficult times. This applies equally to ethics in wartime as it does to other oft-sought virtues such as integrity, honor, valor, and loyalty.<sup>40</sup>

Law of war training alone is not sufficient for service members often due to lack of training time, lack of emphasis, or unrealistic training. Law of war training for service members typically consists of three levels. The first includes entry-level training for all new recruits and commissionees. The second level occurs in units and organizations for all service members and builds upon level one training. The third level occurs in service schools for officers and non-commissioned officers. The first level includes classroom training and practical training. Level two begins to incorporate education for intermediate level leaders and level three educates professionals and senior leaders in the foundations of the law of war.<sup>41</sup>

Levels one and two of law of war training should be seamlessly incorporated into individual and unit training, similar to how risk management and safety methodology is incorporated into the services' training regimens. The U.S. Army's Judge Advocate General's School published a guide entitled the *Law of War Workshop Deskbook* which provides tips for training the law of war to soldiers. In providing relevance and realism toward training the *Deskbook* suggests that classes should be built around the unit's wartime training mission and be

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<sup>39</sup> James H. Toner, 115.

<sup>40</sup> Ibid., 116. Author's Note: Toner comments that military hierarchies in general provide the structure in which abuses of power can occur; however, neither he nor this author suggests that the U.S. military is in jeopardy of systemic abuses of authority.

<sup>41</sup> Department of the Army, Judge Advocate General's School, *Law of War Workshop Deskbook*, Brian J. Bill, ed., (Charlottesville, Virg: International and Operational Law Department, 2000), 278. W. Hays Parks, "Teaching the Law of War," *Ethics and National Defense: The Timeless Issues*, James C. Gaston, and Janis Bren Hietala, eds., (Washington, D.C.: National Defense University Press, 1993), 149.

conducted in the environment in which the unit trains. Classroom instruction provides the basis for understanding the law of war, but it is ingrained through practical scenarios that include the exercising of the rules of engagement. The *Deskbook* also recommends that law of war training in conjunction with the weapons and equipment soldiers use reinforces their understanding of rules of engagement and the mnemonic, RAMP.<sup>42</sup> Role-playing also adds flavor to the training. Training should be evaluated with measurable goals and upon completion of training it should be followed up with a comprehensive after action review.<sup>43</sup>

Level three training for the services consists of classroom education for senior and intermediate leaders. This is accomplished through the service schools and colleges, pre-command courses, and at annual symposiums. At this level leaders typically have a firm understanding of the law of war, but the education program is improved by increasing the amount of time spent on the law of war and by incorporating teaching techniques that are relevant to the leader's level of responsibility. These include realistic scenarios, vignettes, and the historical evolution of the law of war. Although much of this is already occurring in service schools and colleges, what is required is that law of war training must assume an operational orientation rather than simply an individual orientation for senior leaders. An operational orientation also must be standardized across the services with air, sea, or ground emphasis depending upon the component school. Finally, law of war training normally includes instruction by staff judge advocates and chaplains, but it should also include instruction from serving officers who have commanded at the senior levels.

## **Weapons**

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<sup>42</sup> RAMP is a problem-solving mnemonic designed to put rules of engagement into practical effect. RAMP stands for Return fire with aimed fire, Anticipate attack, Measure the amount of force used, and Protect with deadly force only human life.

<sup>43</sup> Department of the Army, Judge Advocate General's School, *Law of War Workshop Deskbook*, 259-60.

Technological developments in U.S. military weapons have increasingly produced weapons with more destructive power and the capability to strike from a distance. Fortunately, with the progression of destructive power, weapon systems are concurrently designed with a view toward improving target discrimination and the reduction of noncombatant casualties incidental to attack. Nevertheless, with each successive breakthrough in improving weapons' accuracy and reliability the ethical standards are increased.

Because weapons by their existence are amoral and it is the consequences of their use that determines their relative morality or immorality, then it follows that an evaluation for moral implications of attack should include all relevant factors. The U.S. military during operations uses a number of tools or regulations to guide it in the use of the appropriate amount of force. Among these include rules of engagement, international law, military law of land warfare, and graduated response matrices. All of these are restrictive measures designed to lessen the severity of attack in order to minimize noncombatant casualties and collateral destruction and are chiefly aimed at individual responsibilities or discrete events.

All states possess weapons applicable to their defense needs, which are typically driven by threats and historical experience. The U.S. maintains an assorted stockpile of weapons, some which are banned by other states under international law and some which are commonly possessed. Understanding the limitations and capabilities of all types of weapons is essential for not only military efficacy, but also for moral evaluation of their use. Categorizing weapons is a constructive means to mark characteristics of groupings of weapons in order to flag commanders and planners to the possible ethical implications of their use. However, categories, as defined by weapon system traits, have limited functionality because they do not account for circumstances, environment, and secondary effects when employed. In his book *Military Ethics*, Emory University Professor Nicholas Fotion to some extent provides a useful framework for categorizing weapons. Fotion broadly defines modern weapons as instruments that fall within three categories. The first category includes objects that disable such as swords, bullets, and

explosives. His second category includes instruments with reach, such as tanks and artillery. The third category contains locators, such as gun sights, range finders, radar, sonar, and thermal imaging devices. He further classifies weapons by their intended use, identifying them as negative, neutral, or positive. Fotion contends that negative weapons include area weapons such as poison gas and cluster bombs for which their use can impact both combatants and non-combatants in a broad area. He identifies neutral weapons as those that have only a military purpose. These include anti-tank weapon systems. Finally, he calls precision weapon systems positive because they can improve discrimination and proportionality in target selection.<sup>44</sup>

Fotion's methodology for the categorization of weapons, although not intended for practical use, is a foundation from which to build upon. Unfortunately, the examples used in Fotion's method are limited to conventional ground weapon systems and historically common weapons of mass destruction. Moreover, his method does not address non-lethal weapons, such as riot control agents, acoustic weapons, stun devices, or computer networks. Computer networks as weapon systems are increasingly becoming more effective as more potential adversaries are becoming "connected" and as technological innovations improve the means of computer network attack (CNA). As a result, a computer network with the ability to conduct CNA is considered a weapon system category of its own, called Electronic Means of Mass Disruption (EMMD).<sup>45</sup> Also, soon forthcoming, directed energy weapons, comprising of ultra-wide band devices or powerful microwave emitters, offer another non-lethal means of attack. They may be used to target communications equipment to permanently or temporarily incapacitate it or they may be used against other systems relying on electronic power. With many effects not unlike a nuclear Electromagnetic Pulse, they are difficult to defend against with existing technology.

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<sup>44</sup> Nicholas G. Fotion, 28-35.

<sup>45</sup> Bayles, William J. "The Ethics of Computer Network Attack." *Parameters* 31, no. 1 (Spring 2001): 55.

Current joint doctrine does not lend guidance in this area, but U.S. commanders can construct similar analytical tools to help guide their use. The U.S. military's increasing emphasis on "jointness" requires a comprehensive evaluation of all weapon systems to include air and maritime platforms.

Just war tradition is an idea that no state is bound to observe, much less concur on the practical definitions of its principles; however, it is an idea whose observance can be comparatively measured in spite of the vagueness of the middle ground. Indeed, today it is unconscionable for the U.S. to destroy an adversary's city out of military necessity, nor is it any more feasible to avoid the city when the adversary's military is using the city to protect its forces behind human shields and protected facilities. The middle ground is the province in which the military commander needs guidance. The law of war provides direction on how to attack enemy forces within the city without violating the legal principles of proportionality, discrimination, and humanity; however, the law of war does not universally address every situation, nor should it attempt to. Just war values can provide the commander a means of weighing the relative merits of different courses of action when attempting to attack an adversary in the city, taking into consideration the law of war, operational requirements, and secondary effects. For instance, if the adversary is provisioning its forces from the city's central water facility and the commander acknowledges a legally substantiated need to prevent the enemy from drawing from the water source, then the commander may elect to attack the enemy's water supply point or water trucks rather than destroying the city's water facility that serves both combatants and non-combatants.

This chapter provided a few recommendations for improving the commander's assay of his or her organization's observance of the moral conduct of war. Although no combination of recommendations, if adopted, can satisfy all demands for moral restraint in war, commanders can make measured and relative improvements toward operational ethics. The commander imparts the greatest impact within the areas of operations and plans, but a force well indoctrinated in the practical application of the law of war elevates the organization's systemic moral conduct.

## CHAPTER SIX

### CONCLUSION

Contemporary American-style warfare requires continuous evaluation to ensure that the manner in which the U.S. fights reflects the values of just war tradition, values that are consistent with the laws of war and with American ideals. The U.S., perhaps more than any other country, has taken tremendous steps in minimizing collateral damage and non-combatant casualties while treating its adversary's military humanely when defeated. This point is abundantly evident by technological innovations that improve accuracy of weapons, the emphasis placed on legal counsel during operations, and the indoctrination of the force. However, with each successive improvement the standards are elevated and these measures sometimes do not prove demonstrably sufficient when considered in the context of the nature of contemporary American war, which relies heavily upon dispersion, standoff attack, and rapid maneuver, all managed from remote command and control centers.

Just war values remain relevant to the U.S. military today. Wartime moral considerations remain the concern of commanders, regardless of religion or personal beliefs, for they represent basic human morality that is espoused by every society. Just war values are inherent to the law of war and their observance assists the commander in upholding those statutes. They are also present in the cultural values of the professional officer corps, values that reflect the expectations of the American public. Finally, adherence to these values has a practical effect, both domestically and internationally. Effectiveness of U.S. foreign policy is tempered by perceptions of how the U.S. fights-- perceptions by our adversaries and friends. As a recent article suggests, "neither ethics nor law, however, can answer all the questions that may arise on twenty-first century battlefields. Very often *policy* addresses the many gray areas that ethics and law do not necessarily enlighten, let alone resolve. Policy is critical because even where a particular course of action is technically moral and legal, there remains the important issue of perceptions."

Perceptions can materially affect the public support that military operations conducted by democracies require.<sup>46</sup>

The emphasis of this monograph lies in the moral conduct of warfare (*jus in bello*), the domain in which military leaders have direct control; however, this does not absolve the military leader of his or her responsibility to the civilian leaders who determine justice toward war (*jus ad bellum*). It is incumbent upon the uniformed leadership to articulate to the policy-makers the potential risks of war and consequences of military action toward creating a better, more just peace. This is extremely important in light of the current U.S. policy of preemptive attack against regimes harboring global terrorists or manufacturing weapons of mass destruction.

The juxtaposition between military necessity and morality will become one of the most pressing issues for U.S. military decision-makers in the first quarter of the twenty-first century. The future of this topic is already manifested in the establishment of the International Criminal Court (ICC) at The Hague. Europe, with its own troubled past and with recent examples of violent internecine warfare across the globe since 1990, recognizes a need to modulate violence in contemporary war; this view is implicit in how Europeans perceive the application of American military power, as well as military activities by other states. No longer facing the Soviet Union, where the exigencies of containing communism tamped down the voices that argued for morality in the limited wars of the latter half of the twentieth century, America's former protagonists in Western Europe and in other areas of the world are seeking policy in their own interests—including interests based upon principled positions and not necessarily economic ones—that may not coincide with American interests. This embracing of a project toward “civility” in warfare will have profound implications for the U.S. military in the years ahead.

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<sup>46</sup> Charles J. Dunlap, Jr., 26.

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